

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|--|---|--------------|
| TAI KWAN CURETON | : | CIVIL ACTION |
| and LEATRICE SHAW, | : | |
| individually and on behalf of all others | : | NO. 97-131 |
| similarly situated, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| NATIONAL COLLEGIATE | : | |
| ATHLETIC ASSOCIATION, | : | |
| | : | |
| Defendant. | : | |

MEMORANDUM

BUCKWALTER, J.

December 18, 1998

This is a putative class action lawsuit filed on January 8, 1997, alleging unlawful discrimination under Title VI of the Civil Rights Act of 1964 against African-American student athletes through the operation of the National Collegiate Athletic Association's initial eligibility rules. Presently, Andrea Gardner and Alexander Wesby, having retained counsel for the named plaintiffs in early November, now move through and by their counsel to be added as party-plaintiffs pursuant to Fed. R. Civ. P. 21, or in the alternative, to be recognized as intervenors aligned with the named plaintiffs pursuant to Fed. R. Civ. P. 24.

Ms. Gardner and Mr. Wesby have taken it upon themselves to respond to the same interrogatories the NCAA served upon the named plaintiffs, from which it appears they are

members of the putative class. Cross-motions for summary judgment are also currently pending before the Court, even though discovery will not close until January 15, 1999. See Cureton v. NCAA, Stipulation and Order (E.D. Pa. Oct. 23, 1998). Indeed, the named plaintiffs themselves have yet to be deposed. Additionally, the named plaintiffs have not yet moved on the issue of class certification.

For the reasons discussed below, although Ms. Gardner and Mr. Wesby cannot be added as party-plaintiffs pursuant to Rule 21, they will be recognized as intervenors aligned with the named plaintiffs pursuant to Rule 24.

I. DISCUSSION

A. Motion to Add Party-Plaintiffs Under Rule 21

Federal Rule of Civil Procedure 21 provides for the misjoinder and non-joinder of parties. Specifically, it allows for parties to “be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.” Fed. R. Civ. P. 21.

Although Ms. Gardner and Mr. Wesby have moved through and by counsel for the named plaintiffs in this action, the Court cannot construe the request to add them as additional party-plaintiffs to be “on motion of any party” in this proceeding. Nothing in their moving or reply papers even suggests that it is the named plaintiffs who desire the addition of these two individuals. While the Court recognizes that this may have simply been a procedural oversight by counsel for the named plaintiffs, Ms. Gardner and Mr. Wesby are currently not parties to this litigation. Thus, a motion brought by them pursuant to Rule 21 is improper and the

Court is reluctant to assume otherwise. Accordingly, the motion of Ms. Gardner and Mr. Wesby to be added as party-plaintiffs is denied.

B. Motion to Intervene Under Rule 24

Potential intervenors, however, may timely move under Fed. R. Civ. P. 24 “when an applicant’s claim or defense and the main action have a question of law or fact in common.” Permissive intervention rests within the sound exercise of discretion of the district court, which “shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Fed. R. Civ. P. 24(b).

The touchstone of this motion is the undue delay or prejudice, if any, to the NCAA. The NCAA has been on notice from the inception of the lawsuit that a class consisting of student athletes may exist. Ms. Gardner and Mr. Wesby appear to be members of that putative class and share common questions of fact and law, as is demonstrated by the answers they provided to the NCAA’s interrogatories. Their intervention at this stage in the proceedings will also likely not affect any of the other outstanding dates in this Court’s October 23rd Stipulation and Order. Specifically, as discovery has not yet closed and the named plaintiffs have not yet been deposed, there appears to be sufficient time remaining within which to schedule the additional depositions of Ms. Gardner and Mr. Wesby. Moreover, a brief examination of the parties’ summary judgment submissions also reveals that allowing Ms. Gardner and Mr. Wesby to intervene will alter neither the substance nor the bases of those motions. And finally, Ms. Gardner and Mr. Wesby retained counsel for the named plaintiffs only recently and it appears that counsel has moved expeditiously in moving to intervene.

In light of the current posture of this litigation, the motion to intervene will be granted. However, it bears noting that the time is near to when motions of this sort would affect the close of discovery and consequently, any additional similar requests will be looked upon with disfavor.

The NCAA has raised several objections to intervention at this time, none of which the Court finds persuasive on the issue of undue delay or prejudice. Procedurally, however, the NCAA points out that Ms. Gardner and Mr. Wesby have failed to accompany their motion with “a pleading setting for the claim or defense for which intervention is sought,” Fed. R. Civ. P. 24(c), opting instead to adopt the underlying complaint of the named plaintiffs in its entirety.

The Court finds this procedure adequately complies with the strictures of Rule 24 in this case as Ms. Gardner and Mr. Wesby are members of the putative class and share common questions of law and fact. They are alleging claims identical to those of the named plaintiffs and their adoption of the underlying pleading would merely involve cosmetic changes to the document, which this Court will not impose upon counsel.

II. CONCLUSION

For the foregoing reasons, although the motion to be added as party-plaintiffs is DENIED, the motion to be recognized as intervenors aligned with the named plaintiffs is GRANTED. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|--|---|--------------|
| TAI KWAN CURETON | : | CIVIL ACTION |
| and LEATRICE SHAW, | : | |
| individually and on behalf of all others | : | NO. 97-131 |
| similarly situated, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| NATIONAL COLLEGIATE | : | |
| ATHLETIC ASSOCIATION, | : | |
| | : | |
| Defendant. | : | |

ORDER

AND NOW, this ____ day of December 1998, upon consideration of the Motion to Add Party-Plaintiffs and/or Alternative Motion to Intervene of Andrea Gardner and Alexander Wesby (Docket No. 46), Defendant's response thereto (Docket No. 50), and Reply Memorandum in Further Support (Docket No. 51), it is hereby ORDERED that the motion is GRANTED, in accordance with the accompanying memorandum.

The Clerk of Court shall amend the case caption accordingly.

BY THE COURT:

RONALD L. BUCKWALTER, J.